

MEMORANDUM

Date: March 10, 2017
To: Representative Jim Runestad, Chairman, Michigan House Judiciary Committee
From: Luke Bowman
Subject: House Bill 4312 (2017)

Introduction

The purpose of this memorandum is to support House Bill 4312 (2017) and to address the issue of reasonable restrictions and qualifications for attorney licensure in the State of Michigan. The purpose of restrictions and minimum qualification standards for admission to the bar are well established, namely the protection of the public, the admission of reputable individuals as officers of the Courts, access to skilled and knowledgeable legal services to the public, and good moral character among other purposes. This bill will increase the public access to justice and allow many of Michigan's native sons and daughters to practice law in their home state both now in and in the future.

Currently, candidates for the bar are required to graduate from a law school that is "reputable and qualified," MCL 600.940. The Board of Law Examiners states that a law school approved by the American Bar Association (ABA) is reputable and qualified. Candidates licensed in other jurisdictions may apply for admission by motion under MCL 600.946 which, among other factors, requires a principal business of occupation to be the practice or teaching of law for 3 out of the previous 5 years. There is not a statutory requirement for graduation from an ABA-approved school for candidates seeking admission by motion. However, the Board of Law Examiners' rules require that the candidates graduate from an ABA-approved law school.

Discussion

House Bill 4312 (2017) requires consideration of many factors and perspectives from the role of universities and institutions, to public impact.

The current requirement of school accreditation by the ABA places an undue burden on the individual and fails to consider that it is the applicant's skills, character and abilities that are at issue, rather than the credentials of the educational body. After all an individual can be highly skilled, impeccably qualified and of excellent character and be a graduate of little known and/or little respected institution and conversely the opposite is also true. The purpose of any law school or University is to provide preparation through education, clinical training, and other methodologies for the practice of law. The purpose of the bar exam is to test the qualities and skills that an individual has achieved. The bar exam is universally required across 56 US jurisdictions and consists of character and fitness evaluation, Multistate Professional Responsibility Exam (MPRE), written essays, and in some states, a performance test. Recent graduates seeking to practice law in Michigan and (with limited exceptions,) individuals licensed in other jurisdiction must pass this exam to practice law in Michigan. A candidate's licensure in another jurisdiction maintains, or amplifies their qualifications, as they have past proven knowledge that has been demonstrated objectively on previous exams and in some cases, the exam in other states is much more rigorous than the Michigan bar. Candidates licensed in other jurisdictions are still be required to pass the Michigan bar showing competence in Michigan law, achieve a score of 85 on the

MPRE, and achieve a favorable recommendation from the Michigan Committee on Character and Fitness.

Comparison with Other State Requirements

While the ABA Standards for Accreditation focus on the law school's capability, the concerns over capabilities of a candidate who has attended a law school in the US that is not ABA-approved can easily be assuaged by the candidate's completion of the rigors of the licensure and admission process in other jurisdictions, and also by the history of the lack of disciplinary history where these candidates are eligible for licensure, most notably in Wisconsin. Neighboring jurisdictions have allowed non-ABA law school educated candidates licensed in other jurisdictions to sit for the bar or to be admitted by motion since 1998¹. Since that time, there have not been any attorneys who attended non-ABA approved law schools subject to discipline in Wisconsin.

If passed, House Bill 4312 (2017) would allow non-ABA approved law schools to be eligible for admission to the bar. It is not very likely to result in a major influx of graduates from non-ABA accredited institutions. For example, Wisconsin has allowed non-ABA accredited graduates to take the bar exam since 1998. In that time 45 non-ABA US law school candidates have taken the exam with an 89% pass rate,² compared to 4,725 ABA-approved law school candidates with an 81% pass rate on the same exam. Minnesota has also recently begun allowing non-ABA law school graduates, who are also licensed in other jurisdictions, to be eligible to sit for its bar exam. Graduates of non-ABA accredited institutions are not seeking special treatment, simply the opportunity to sit for the bar exam and prove their skill and ability.

While the 45 candidates from Wisconsin, may not seem like a significant number, they have likely served several hundreds or thousands of clients over the years, and have been able to increase the access to justice in Wisconsin for those clients. Additionally, they have raised the standard and provided a challenge that graduates of ABA accredited institutions have yet to meet. Michigan, like Wisconsin, could also certainly benefit from individuals who have the legal knowledge, skills, training, and capacity to make a difference in the lives of Michigan citizens, especially as more areas are becoming legal deserts across the state. Statutorily, Michigan does not require graduation from an ABA-approved law school, however the path to licensure has extensive waiver submission requirements and inexact guidelines in which waivers are granted. Resulting a quasi-official requirement that an individual has little hope of overcoming.

The Michigan bar exam recently underwent revisions that increase difficulty of passing and thus a higher level of knowledge and skill for attorneys being admitted to the bar.³ This is a healthy revision and placed the emphasis not on the school or university attended, but on the capabilities of the individual. After all, institutions are not admitted to practice law, but individuals with competent legal skill and ability. Individuals need to demonstrate their qualifications and abilities to practice law and a more difficult exam assists with providing a forum to demonstrate legal ability and skill, which has little if anything to do with whether or not the education institution chosen by the individual is ABA accredited or not.

Protectionism, or the idea that the public is protected by the ABA accreditation requirements is not a stated goal of the ABA, but this argument is frequently used to perpetrate

¹ <https://docs.legis.wisconsin.gov/misc/sco/37>. Accessed October 29, 2015.

² <http://www.ncbex.org/publications/statistics>. Accessed October 29, 2015.

³ <http://abovethelaw.com/2013/12/harder-michigan-bar-is-here-to-stay/?rf=1>

the idea that graduates of non-ABA accredited schools result in incompetent representation. Nothing can be further from the truth. As mention earlier, the ABA requirement places the burden of qualification on the institution, rather than the individual. The result is that many highly qualified individuals cannot practice law and serve the general public; We may have many ABA accredited institutions, but the individuals are not of the highest quality because of they cannot be tested and a tried by a competitor.

Personal Background

Personally, I am admitted to practice law before two Federal courts and all courts in two states: Wisconsin and California, but I cannot take the bar in my native state because I chose a cost effective law school that is not accredited by the ABA. My family history in Michigan runs more than 5 generations deep. I was born and raised in Boyne City, Michigan, one of our State's more rural and beautiful areas. My Great- Great Grandfather, Frank Kaden was president of the Boyne City Bank and my Great-Great-Great Grandmother was one of the founders of Boyne City. With such a rich history in Michigan, I have chosen to practice law here, rather than in some other state, despite the fact that I cannot practice State law due to the current restrictions and ABA accreditation requirement. Instead, I must limit my practice to Federal law. I currently provide legal services to the underserved residents of Michigan through Michigan Immigrant Rights Center, and to two independent nonprofit organizations.

Historical Precedent

Thomas M. Cooley Law School is a respected Michigan institution⁴, which received ABA accreditation in 1978, six years after its founding in 1972, Cooley's inaugural class took the Michigan bar at least two years before Cooley received accreditation from the American Bar Association. This historical precedent demonstrates that in the past, the Michigan Judiciary placed higher emphasis on individual qualifications and individual quality of education for eligibility to take the bar exam than on school membership in the ABA.

Conclusion

This bill will benefit the public at large as it will increase the access to justice, increase the quality of legal service available to the public and allow candidates for the bar to stand on their own merits rather than on the membership, or lack thereof, to a group or institution.

I thank the Judiciary Committee for their careful review of this issue. Please let me know if I can provide any additional information that would be helpful to your consideration of this matter.

Respectfully Submitted,

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⁴ https://en.wikipedia.org/wiki/Western_Michigan_University_Cooley_Law_School